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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,451	12/20/2001	Gabriel Hamman Adam	KCC-15,872	4840

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EXAMINER


COLE, ELIZABETH M

ART UNIT PAPER NUMBER

1771

DATE MAILED: 02/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/037,451	Applicant(s) ADAM ET AL. 	
	Examiner Elizabeth M Cole	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomita et al, U.S. Patent No. 5,618,610 in view of WO 00/47153 to Abuto. Tomita et al, U.S. Patent No. 5,618,610. Tomita et al discloses a fibrous material comprising a plurality of fibers which are distributed across the x-y plane of the fabric into zones which have higher and lower basis weights. The portions having higher basis weights are thicker than the rest of the fabric. There is no discrete or disturbed material boundaries in that whole fibers exist between the portions. See figs 1-3 as well as col. 2, lines 15-29. Since there are more fibers in the portions with the higher basis weights, those portions would inherently have a higher concentration of absorbent material, (claim 4). Tomita et al differs from the claimed invention because Tomita does not disclose the particularly claimed patterns, and does not disclose employing superabsorbents within the high basis weight zones. With regard to the different patterns, since Tomita et al teaches hydroentangling the fibers and then heat treating to crimp the fibers in the high basis weight zones, it would have been obvious to have selected appropriate patterns for the hydroentangling based upon aesthetic considerations, etc., since it is known to hydroentangle fabrics so that patterns are

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formed. With regard to the superabsorbents, Abuto teaches that absorbent materials comprising rows having different basis weights, etc., may further comprise different deniers of fibers, as well as superabsorbent materials. See page 11. Abuto teaches that these various components may be selected through the process of routine experimentation in order to result in a material having the desired absorbency characteristics. Therefore, it would have been obvious to one of ordinary skill in the art to have further incorporated a variety of additional components such as superabsorbents, fibers having different deniers, etc., into the zones of Tomita et al. One of ordinary skill in the art would have been motivated to incorporate the additional components into the zones of Tomita et al by the expectation that these additional components would further enhance the properties of the Tomita material.

3. Applicant's arguments filed 11/17/03 have been fully considered but they are not persuasive. Applicant argues that since Tomita does not discuss the use of its low basis weight areas as necessary for liquid distribution, does not discuss the use of its high basis weight areas as necessary for liquid retention and does not discuss the use of superabsorbent within the web, this would lead the person having ordinary skill in the art to consider Tomita as non-analogous art. However, In response to applicant's argument that Tomita is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Tomita is in applicant's field of

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endeavor because Tomita is drawn to a wiper material comprising the claimed structure. With regard to whether Tomita discusses the use of the different layers within the wiper, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Similarly, with regard to the recitation that Tomita is directed to a "personal care product", since the structure of Tomita is the same and since Tomita is used as a wiper and is disclosed as having a soft hand, the Tomita wiper is capable of performing the intended use.

With regard to the argument that in Tomita the needling process would result in the "breaking (disturbing) of fibers" and therefore, there would not be undisturbed whole fibers at the material boundaries, water jet needling or hydroentangling does not break fibers but instead entangles and/or moves some fibers. Therefore, as is clear from the figures, whole fibers would still remain and therefore, Tomita meets the claimed limitations.

Applicant states that "as persons of skill in the art" they are "unfamiliar" with any "aesthetic considerations" which would lead a person having ordinary skill in the art to the claimed patterns." However, texturizing nonwoven wipers so that they have an

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appearance and hand which is closer to a traditional textile and/or forming a pattern on such wipers to decorate them, is well known and conventional in the art.

Applicant states that it not clear to Applicant where "it is "known to hydroentangle fabrics so that patterns are formed"". However, by hydroentangling on a forming surface a pattern would necessarily be formed on the fabric. By selecting the forming surface the pattern form may also be controlled. Thus, Tomita hydroentangles so as to form a pattern having the raised area. To select other patterns would be within the skill of a person having ordinary skill in this art.

With regard to the argument that Tomita and Abuto are not combinable because Tomita teaches hydroentangling while Abuto employs superabsorbents, since, (as is clearly taught by Abuto at page 7, line 21), that hydroentangling and needling are art recognized equivalent means of mechanically consolidating a nonwoven web, if the use of superabsorbents posed a problem regarding hydroentangling, the web could have been mechanically needled instead.

With regard to the motivation to combine Abuto and Tomita, Applicant argues that the passage cited in Abuto means that Abuto is teaching that "one must have the functionality and structural considerations of a nonwoven layer firmly in mind and select all material properties with great care". The examiner agrees that care is needed in selecting the components. However, Abuto clearly teaches that the various aspects of the invention such as basis weight, denier, wettability, density bonding, interfiber pore size as well as the choice of the particular superabsorbents may be selected by one of ordinary skill in the art. The only way that these aspects can be selected and optimized

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is within the process of routine experimentation since, although guidelines are provided, each and every combination is not specifically disclosed.

With regard to claims 7, 13, 14, 20 and 21, these claims are addressed in the combination rejection of Tomita in view of Abuto.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Inquiries of a general nature may be directed to the Group Receptionist whose telephone number is (571) 272-0994.

The fax number for all official faxes is (703) 872-9306.

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A handwritten signature in black ink, appearing to read "Elizabeth M. Cole". The signature is fluid and cursive, with the first name being the most prominent.

Elizabeth M. Cole  
Primary Examiner  
Art Unit 1771

e.m.c